

Regular Session, 2011

# ACT No. 160

HOUSE BILL NO. 69

BY REPRESENTATIVE LIGI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 40:1299.44(A)(1)(b) and to enact R.S. 40:1299.44(D)(2)(b)(xvi)  
3 and 1299.44.1, relative to the Patient's Compensation Fund; to provide for the  
4 investment of fund monies by the board; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 40:1299.44(A)(1)(b) is hereby amended and reenacted and R.S.  
7 40:1299.44(D)(2)(b)(xvi) and 1299.44.1 are hereby enacted to read as follows:

8 §1299.44. Patient's Compensation Fund

9 A.(1)

10 \* \* \*

11 (b) The Patient's Compensation Fund Oversight Board may ~~enter into a~~  
12 ~~cooperative endeavor agreement whereby the state treasurer shall be authorized to~~  
13 ~~invest, in accordance with R.S. 40:1299.44.1, a any portion of the private monies~~  
14 ~~comprising the corpus of the fund, as determined by the board, in the same manner~~  
15 ~~and in accordance with the law governing the investment of funds of the state, or~~  
16 ~~develop and adopt an investment policy which complies with R.S. 49:327(B)(5).~~  
17 ~~Income from investments under the authority of this Subsection shall be credited to~~  
18 ~~the fund~~ which are not required for the payment of one and one-half times the current  
19 fiscal year of budgeted expenditures. The board may enter into a cooperative  
20 endeavor agreement whereby the state treasurer may be authorized to invest, in

1 accordance with R.S. 40:1299.44.1, a portion of the private monies comprising the  
2 corpus of the fund, as determined by the board.

3 \* \* \*

4 D.

5 \* \* \*

6 (2)

7 \* \* \*

8 (b) In addition to other powers and authority expressly or impliedly  
9 conferred on the board by this Part, the board shall have the authority, to the extent  
10 not inconsistent with the provisions of this Part, to:

11 \* \* \*

12 (xvi) Employ an appropriately qualified chief investment officer and  
13 delegate to him a portion of the authority vested in the board related to investments,  
14 subject to the superseding authority of the board.

15 \* \* \*

16 §1299.44.1. Investment responsibilities

17 A. The Patient's Compensation Fund shall be maintained for the use, benefit,  
18 and protection of medical malpractice claimants and private health care provider  
19 members of the fund. The fund shall be maintained on a sound actuarial basis and  
20 the investment practices of the board in administering the fund are an integral part.

21 B. The prudent man rule shall be applied by the board in investing monies  
22 of the fund.

23 C.(1) The prudent man rule shall require each member of the board and the  
24 board collectively to act with the care, skill, prudence, and diligence under the  
25 circumstances prevailing that a prudent institutional investor acting in a like capacity  
26 and familiar with such matters would use in the conduct of an enterprise of a like  
27 character and with like aims.

28 (2) The prudent man standard requires the exercise of reasonable care, skill,  
29 and caution, and is to be applied to investments not in isolation, but in the context  
30 of the fund portfolio, and as part of an overall investment strategy, which shall

1 include an asset allocation study and plan for implementation thereof, incorporating  
2 risk and return objectives reasonably suited to the fund. The asset allocation study  
3 and implementation plan shall include the examination of market value risk, credit  
4 risk, interest rate risk, inflation risk, counterparty risk, and concentration risk. The  
5 investment policy of the board shall preserve and enhance principal over the long  
6 term and provide adequate liquidity and cash flow for the payment of benefits and  
7 expenses of the fund and the board under this Part. The investments shall be  
8 diversified to minimize the risk of significant losses unless it is clearly prudent to do  
9 otherwise.

10 D.(1) Notwithstanding the prudent man rule, the board shall not invest more  
11 than twenty-five percent of the total portfolio in equities, except as provided in  
12 Paragraph (2) of this Subsection.

13 (2) The board may invest more than twenty-five percent of the total portfolio  
14 in equities, so long as not more than thirty-five percent of the total portfolio is  
15 invested in equities and at least ten percent of the total equity portfolio is invested  
16 in one or more index funds which seek to replicate the performance of the chosen  
17 indices.

18 (3) When contemplating any investment, action, or asset allocation, the  
19 following factors shall be considered:

20 (a) The availability of public pricing to value each investment.

21 (b) The ability to liquidate each investment at a fair market price within a  
22 reasonable time for the size of investment being considered.

23 (c) The degree of transparency that accompanies each investment.

24 (d) The risk of fluctuations in currency.

25 (e) The experience of the professionals who will manage each investment  
26 and the financial soundness of the business entity employing the professionals.

27 (f) The degree of diversification within each investment and what each may  
28 provide relative to the existing investments.

29 (g) Whatever leverage is involved.

30 (h) The jurisdiction of the laws that govern each investment.

1                    (i) The net return expected relative to the risk associated with each  
2                    investment.

3                    E.(1) The board shall electronically submit semiannual reports beginning  
4                    January 1, 2012, to the House Committee on Civil Law and Procedure and the Senate  
5                    Committee on Judiciary A. The reports shall be submitted no later than thirty  
6                    calendar days after January first and July first of each year and shall contain the  
7                    following:

8                    (a) The investment return net of investment fees and expenses expressed as  
9                    a percentage return and dollar amount.

10                   (b) The amount of administrative expenses.

11                   (c) The board approved target asset allocation.

12                   (d) The current actual asset allocation of the portfolio.

13                   (2) Investment returns reported in accordance with this Subsection shall be  
14                   by total fund and particular asset class over the six-month period reported, fiscal  
15                   year-to-date, one-year, three-year, five-year, and ten-year periods.

16                   F. The board is hereby authorized, in requesting proposals for investment  
17                   advisory services, to require fees to be quoted as a fixed fee, a fee based on market  
18                   value of assets, or a performance fee.

19                   G.(1) Investment performance reports shall be in compliance with the current  
20                   Performance Presentation Standards as amended and published by the Association  
21                   for Investment Management and Research or any successor entity.

22                   (2) Investment performance composite data submitted in response to a  
23                   request for proposal or any other solicitation or selection process used by the board  
24                   for hiring an investment manager or investment advisor shall be in compliance with  
25                   the current Performance Presentation Standards as amended and published by the  
26                   Association for Investment Management and Research or any successor entity.

27                   (3) The board shall require, at least annually, the investment managers or  
28                   investment advisors employed or otherwise retained by the board to submit  
29                   investment performance composite data that is subject to a Level I verification as

1 defined in the Performance Presentation Standards as amended and published by the  
2 Association for Investment Management and Research or any successor entity.

3 H.(1) Consultants and money managers shall provide full disclosure of  
4 conflicts of interest to the board. Consultants shall also provide full disclosure of  
5 any payments received from money managers, in hard or soft dollars, for any  
6 services provided, including but not limited to performance measurement, business  
7 consulting, and education.

8 (2) Each consultant and money manager shall submit a written disclosure  
9 report semiannually to the board beginning January 1, 2012. A report shall be  
10 submitted regardless of whether the consultant or money manager has any conflict  
11 or payment to report. If a reportable agreement is confected during any reporting  
12 period, the consultant or money manager shall notify the board of the agreement  
13 within seven business days.

14 I. Any consultant or money manager found to be in violation of Subsection  
15 H of this Section shall pay to the board an amount of money equal to the value of the  
16 undisclosed revenue or payment and any damages caused by the failure to disclose.  
17 Additionally, if the consultant or money manager intentionally failed to disclose as  
18 required in Subsection H of this Section, he shall pay to the board an amount equal  
19 to three times the value of the revenue or payment he failed to disclose as a penalty  
20 and any damages caused by the failure to disclose.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_